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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,598	12/05/2003	Joe Stugan	23418.00	7507

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EXAMINER

ALIMENTI, SUSAN C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/727,598

Applicant(s)

STUGAN, JOE

Examiner

Susan C. Alimenti

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-22 is/are pending in the application.
- 4a) Of the above claim(s) 11-12, 21-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-10, 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 11, 12, 21 and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 03 August 2005.

2. Applicant's election with traverse of species A in the reply filed on 03 August 2005 is acknowledged. The traversal is on the grounds that the additional species do not appear to place an additional burden on the examiner. This is not found persuasive because each species is a distinctive fastening element, each requiring individual search.

The requirement is still deemed proper and is therefore made FINAL.

### ***Allowable Subject Matter***

3. The indicated allowability of claims 6-8 is withdrawn in view of the newly discovered references to Fields, and Matts. Rejections based on the newly cited references follow.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 9 and 19 recites the limitation "the fastening strips" in 2 of each claim.

There is insufficient antecedent basis for this limitation in the claim as claims 8 and 18 conversely claims "straps."

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***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheehy (USPN 2,516,264), and further in view of Rogers (USPN 4,274,123) and Fields (USPN 5,386,663).

Sheehy discloses the claimed invention except it is not positively stated how the device could be mounted to a supporting surface in order to stabilize the same. Sheehy's vermin controlling device, usable for repelling birds from a boat, comprises a generally circular element 1, a power supply, positively and negatively charged wires 4 & 5 (Sheehy, col. 2, lns.30-36) embedded in the top side of element 1. The wires 4 & 5 are configured in the form of a swirl with said wires lying proximate one another and curling about the top surface of said circular element 1. It is further noted that top element 10 is readily removable, and the device would still work properly without said top element.

Should one desire to mount the device on a support surface in a more permanent position, very minor modifications could be employed without altering the scope of the invention in any way. Rogers discloses a similar animal electrocution device, and teaches mounting the device to a support surface via tabs 6, 7, wherein a pin-like member is fit through aperture 8 in order to secure the device (Rogers, col.2, lns.57-59). Fields also discloses a similar vermin controlling device wherein pins 61 are inserted into holes in order to stabilize the device in place as animals are coming in contact therewith

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(Fields. col.4, Ins.38-43). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use mounting or dowel pins in order to stabilize Sheehy's in a permanent position as animals or pests come in contact therewith.

8. Claim 2, 3, and 5 is rejected under 35 U.S.C. 103(a) as obvious over Sheehy in view of Rogers and Fields as applied to 1 above.

Regarding claim 2, Sheehy discloses the claimed invention except it is not positively disclosed from what type of ceramic element 1 is made. Sheehy does, however, teach that a preferred material would be a "ceramic, or equivalent insulating material, preferably a material which is somewhat wear resistant and readily cleansable" (Sheehy, col.2, Ins.21-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct element 1 from a masonite ceramic peg board, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 3, Sheehy is non-specific as to the type of material wires 4 & 5 are made of. It is well known in the electrical arts that 14, 16, and 18 gauge cooper wire is a preferable conducting material for the purposes of Sheehy's device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use 14, 16 or 18 gauge cooper wire, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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Regarding claim 5, Sheehy as modified discloses the claimed device, except one might argue that the wires 4 & 5 do not begin the swirl at the “center” of the circular element 1. The center or *central area* (emphasis added) of Sheehy’s device is considered broadly to be the area inwards of the outer perimeter of the element 1, however rearranging Sheehy’s device by beginning the swirl at a *central point* (emphasis added) of element 1 would not alter the scope of the invention. It would have been obvious to one having ordinary skill in the art at the time the invention was made to begin the swirl of the wire at the central point of the circular element enlarging the coverage area, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

9. Claims 8-10 13-15, and 17-20 is rejected under 35 U.S.C. 103(a) as obvious over Sheehy in view of Rogers and Fields as applied to claims 1-3, and 5 above, and further in view of Matts et al. (USPN 2005/0091911).

Regarding claims 8, 13, and 18 Sheehy, as modified, discloses the claimed device except fastening straps are not attached to the bottom or top side of the device. Matts et al. (Matts) discloses a pest control device of similar structure that utilizes a Velcro® strap on the bottom of the device in order to hold it in place (Matts [0036]). Matts further suggests that various other means for attachment may be employed without altering the scope of the invention. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sheehy’s device by adding a hook and loop type strap on the bottom of said device in order to provide a more stable connection to various types of supporting surfaces.

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Regarding claims 9, 10, 19 and 20 (as best understood) and the above discussion regarding Matts, Sheehy as modified discloses the claimed invention except two strips connecting to one another are not positively disclosed. It is well-known, however, that a hook-and-loop type arrangement requires two mating strips in order to couple two objects together. Therefore, the teaching in Matts, inherently discloses that two strips would engage one another via a fastening element, i.e. one hook element and one loop element.

Claims 14, 15, 17, and 18 are rejected as set forth to similarly phrased claims above.

10. Claims 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheehy in view of Rogers and Fields and Matts, as applied to claims 1 and 13 above, and further in view of Hiroshi (JP 11-9171) and Pueyo et al. (US 5,986,551).

Sheehy, as modified, discloses the claimed invention except he does not utilize a light system in addition to the electrocuting system in order to further deter animals from approaching the area of the device. It is well known that certain bright flashing lights will deter animals, such as birds, from approaching an area containing such lights.

Hiroshi discloses a device in the same field of invention, i.e. animal abatement devices, that utilizes flashing LED lights to deter birds from entering an area. The combination of multiple pest deterring devices has also been illustrated in the art, as disclosed by Pueyo et al. (Pueyo hereafter). Pueyo's bird deterrent device utilizes a multi-phase method that employs at least two (visual and audible) bird frightening devices on a site (Pueyo, Abstract). Pueyo teaches that this overlapping of deterrent devices increases the effectiveness of scaring the birds and keeping them from returning to a particular area

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(col.3, ln.43 to col.4, ln.6). It would have been obvious to one having ordinary skill in the art at the time the invention was used to combine the electric shock of Sheehy's device with Hiroshi's light deterrent system, since it is well known in the art to combine multiple pest repelling methods in order to increase the overall effectiveness of the device.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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SUPERVISORY  
PRIMARY EXAMINER

Susan C. Alimenti